

Message Text

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FM USMISSION USBERLIN
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INFO ICA WASHDC PRIORITY
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C O N F I D E N T I A L SECTION 1 OF 7 USBERLIN 1425

DEPT FOR L, BONN FOR GALLAGHER

E.O. 11652: GDS
TAGS: ETEL, BQG, AKB
SUBJECT: COMMERCIAL BROADCASTING IN BERLIN: BARTLETT PROPOSAL

REFS: (A) STATE 120510; (B) STATE 120352; (C) STATE 47671;
(D) CHESTER/SURENA LETTER OF 23 FEB 78; (E) CHESTER/SURENA
LETTER OF 17 OCT 77; (F) 77 BONN 16901

SUMMARY: AUTHORITY TO GRANT PERMISSION TO ESTABLISH COMMERCIAL
(OR ANY NON-ALLIED) BROADCASTING IN U.S. SECTOR OF BERLIN LIES
NOT REPEAT NOT WITH U.S. AUTHORITIES IN BERLIN, BUT IN THE FRST
INSTANCE WITH GERMAN AUTHORITIES IN BERLIN WHOSE DECISION IS
SUBJECT TO CONCURRENCE/OBJECTION BY ALLIED KOMMANDATURA. WE
BELIEVE THAT BERLIN AUTHORITIES WOULD NOT REPEAT NOT FAVOR
PROPOSAL. HOWEVER, ASSUMING PERMISSION IS GRANTED BY GERMAN AUTH-
ORITIES AND ALLIED KOMMANDATURA, ANY NEEDED COORDINATION OF
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FREQUENCIES WITH GDR AND OTHER COUNTRIES AFFECTED WOULD BE UNDER-
TAKEN WITH APPROVAL OF ALLIES BY FRG (I.E. REPRESENTING THE INT-
ERESTS OF BERLIN ABROAD). PAST AND CURRENT EXPERIENCE HAS SHOWN
THAT GDR AUTHORITIES MAY BALK AT DISCUSSING BERLIN
FREQUENCY COORDINATION WITH FRG. GDR UNWILLINGNESS TO
DISCUSS MATTER MAY INCREASE IF IT APPEARS THAT BROADCAST
WOULD REACH RESIDENTS OF EAST BERLIN AND GDR. ACTION

RECOMMENDED: SHOULD HE WISH TO PURSUE PROPOSAL, BARTLETT SHOULD RAISE IT (IF HE HAS NOT ALREADY DONE SO) WITH COMPETENT BERLIN OFFICE, THE LANDESPOSTDIREKTION BERLIN. END SUMMARY.

1. THROUGHOUT BARTLETT MEMORANDA (SEE ATTACHMENTS TO REFS D AND E), SEVERAL FUNDAMENTAL MISCONCEPTIONS RELATIVE TO LEGAL SITUATION IN BERLIN ARE APPARENT. FACT THAT U.S. IS ONE OF THREE SUPREME POWERS IN WESTERN SECTORS OF BERLIN (WFB) DOES NOT REPEAT NOT MEAN THAT U.S., BRITISH OR FRENCH CAN ACT ON ALL MATTERS IN BERLIN WITHOUT REFERENCE TO GERMAN AUTHORITIES. THE ALLIES HAVE, MOST PARTICULARLY IN THE 1955 DECLARATION ON BERLIN, PLACED LIMITATIONS AND RESTRICTIONS ON HOW THEY WILL EXERCISE THEIR SUPREME AUTHORITY.

2. THE ALLIES HAVE FURTHER RESTRICTED THEIR OWN AUTHORITY BY GRANTS OF AUTHORITY OR COMPETENCE TO BERLIN AUTHORITIES. THESE GRANTS HAVE BEEN ACCOMPLISHED BY A NUMBER OF MEANS: E.G. BERLIN KOMMANDATURA/ORDER - BK/O - A PUBLIC DOCUMENT EQUIVALENT TO LEGISLATION; OR BERLIN KOMMANDATURA/LETTER - BK/L - A PRIVATE COMMUNICATION (SOMETIMES CLASSIFIED) TO THE BERLIN GOVERNING MAYOR WHICH WHILE NOT LEGISLATION GIVES INFORMATION OR INSTRUCTIONS TO BERLIN AUTHORITIES WHICH THEY ARE OBLIGED TO FOLLOW.
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3. BARTLETT MEMORANDA ALSO REFLECT THE MISTAKEN VIEW THAT U.S. AUTHORITIES ARE FREE TO ACT WITHOUT LIMITATION OR RESTRICTION IN U.S. SECTOR. FOR REASONS GIVEN ABOVE THIS IS ALSO INCORRECT. IN ADDITION, THE ALLOCATION OF FREQUENCIES IS A TRIPARTITE MATTER AND COULD NOT BE CONSIDERED A UNILATERAL U.S. MATTER SIMPLY BECAUSE A TRANSMITTER OR RADIO/TV STATION IS PROPOSED TO BE LOCATED IN THE U.S. SECTOR.

4. THUS, AS DETAILED IMMEDIATELY BELOW, THE ALLOCATION AND COORDINATION OF FREQUENCIES IN THE WSB IS A MATTER WITHIN THE ULTIMATE CONTROL OF THE AK, NOT REPEAT NOT THE U.S. AUTHORITIES IN BERLIN. MOREOVER, THE AK HAS RELINQUISHED TO THE GERMAN AUTHORITIES IN BERLIN THE AUTHORITY TO PASS IN THE FIRST INSTANCE ON ANY REQUEST FOR NON-ALLIED USE OF FREQUENCIES. THE AK HAS RESERVED THE RIGHT TO OBJECT TO USES WHICH THE BERLIN AUTHORITIES APPROVE.

5. BACKGROUND ON ALLIED/SENAT AREAS OF RESPONSIBILITY

(A) BK/O(45)36 "TELEPHONE, TELEGRAPH AND RADIO COMMUNICATIONS", PROHIBITED "GERMAN MUNICIPAL ORGANIZATIONS, ENTERPRISES FIRMS AND PRIVATE INDIVIDUALS, THE USE OF RADIO-TRANSMITTING STATIONS REGARDLESS OF THEIR PURPOSE, TYPE AND THEIR CAPACITY." THIS BK/O WAS REPEALED BY BK/O(49)131.

(B) MILITARY GOVERNMENT ORDERS OF AUGUST 1945 AS AMENDED IN 1949 "PERTAINING TO THE CONTROL OF PUBLICATIONS, RADIO/BROADCASTING AND FILMS" PRESCRIBED THAT FOR THE OPERATION OF A BROADCASTING STATION A MILITARY GOVERNMENT LICENSE WAS REQUIRED IN ADDITION TO ANY

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LICENSE OR AUTHORITY WHICH MAY HAVE BEEN REQUIRED BY GERMAN LAW. THOSE MILITARY GOVERNMENT ORDERS AND RELATED LEGISLATION WERE REPEALED BY SECTOR ORDINANCES NO. 528 WITH EFFECT OF JULY 1, 1955.

(C) BK/O(49)262 "RADIO BROADCASTING" DATED DECEMBER 22, 1949, PROVIDED IN PERTINENT PART, AS FOLLOWS:

"NEW RADIO BROADCASTING, TELEVISION OR WIRED RADIO TRANSMISSION INSTALLATION SHALL BE SET UP ONLY WITH

THE SPECIFIC APPROVAL OF THE ALLIED KOMMANDATURA. THERE SHALL BE NO TRANSFER OF CONTROL OF ANY INSTALLATION OF THIS NATURE WITHOUT THE AUTHORIZATION OF THE ALLIED KOMMANDATURA. GERMAN RADIO OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH FREQUENCY AND POWER ALLOCATIONS MADE BY THE ALLIED KOMMANDATURA." THIS WAS RECONFIDENTIAL

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PEALED BY BK/O(58)8.

(D) FURTHER, THERE EXISTS AN OLD REICHS LAW, ON COMMUNICATIONS INSTALLATIONS (GESETZ UEBER FERNMELDEANLAGEN OF JANUARY 4, 1928, REICHSGESETZBLATT 1928, P. 8) WHICH IS STILL IN FORCE IN BERLIN. ACCORDING TO THIS LAW THE REICH HAD THE EXCLUSIVE RIGHT TO SET UP AND TO OPERATE A BROADCASTING STATION. A LICENSE FOR THE ESTABLISHMENT AND OPERATION OF A BROADCASTING STATION COULD BE GRANTED. THE GRANT WAS MADE BY THE REICHSPOSTMINISTER OR AUTHORITIES DELEGATED BY HIM. WE HAVE BEEN INFORMED THAT THE FRG POST MINISTER DELEGATED HIS POWER TO GRANT A LICENSE FOR THE OPERATION OF A BROADCASTING STATION IN BERLIN TO THE LANDESPOSTDIREKTION (LPD) BERLIN. IN ANY EVENT, THE AK WOULD NOT CONSIDER A FEDERAL AUTHORITY COMPETENT TO ISSUE SUCH LICENSES FOR BERLIN. THUS, WHETHER BY FEDERAL DELEGATION OF AUTHORITY OR BY ALLIED THEORY, THE LPD IS THE SUCCESSOR AUTHORITY UNDER THE 1928 REICHS LAW.

(E) IN BK/O(50)23 THE BERLIN MAGISTRAT (PREDECESSOR TO THE BERLIN SENAT) WAS ORDERED TO OBSERVE THE PROCEDURES, REGULATIONS AND RECOMMENDATIONS OF THE INTERNATIONAL TELECOMMUNICATIONS UNION. THE BK/O ALSO STATED THAT "THE AUTHORITY FOR THE ALLOCATION AND CLEARANCE OF RADIO FREQUENCIES IS RESERVED TO THE ALLIED AUTHORITIES". THESE PROVISIONS ARE STILL IN FORCE: BK/O(57)16.

(F) UNDER ARTICLE II OF THE DECLARATION ON BERLIN OF 1955 THE ALLIES RESERVED TO THEMSELVES THE RIGHT TO TAKE NECESSARY MEASURES TO MAINTAIN THE STATUS AND

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SECURITY OF BERLIN AND, IN PARTICULAR, ITS COMMUNICATIONS. UNDER ARTICLE III IT WAS STATED THAT THE ALLIES WOULD NORMALLY ONLY EXERCISE POWERS IN, INTER ALIA, THE

INTERESTS OF THE ALLIED FORCES AND RELATIONS OF BERLIN
WITH AUTHORITIES ABROAD. HOWEVER, WITH REGARD TO THE
LAST MATTER THE ALLIES WOULD PERMIT REPRESENTATION ABROAD
OF BERLIN'S INTERESTS BY SUITABLE ARRANGEMENTS (I.E.
BY THE FRG; SEE PARA 7 OF THIS MESSAGE).

(G) IN BK/L(57)30 THE SENAT WAS REMINDED OF THE
AK'S ULTIMATE RESPONSIBILITY FOR THE ALLOCATION OF
READIO FREQUENCIES IN BERLIN. THE BK/L ALSO SET OUT
THE RESPECTIVE RESPONSIBILITIES OF THE ALLIES AND THE
GERMAN AUTHORITIES IN THE AREA. IN PERTINENT PART IT
READS AS FOLLOWS:

BEGIN TEXT

1. THE ALLIED KOMMANDATURA REMAINS ULTIMATELY RE-
SPONSIBLE FOR THE ALLOCATION OF READIO FREQUENCIES
IN BERLIN, AND IN EARLIER ALLIED LEGISLATION VARIOUS
PROCEDURES FOR CARRYING OUT THIS RESPONSIBILITY WERE
LAID DOWN WHICH, HOWEVER, HAVE IN THE COURSE OF TIME
BECOME INOPERATIVE.

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2. IN ORDER TO PROVIDE AN EFFICIENT BASIS FOR PRESENT DAY PURPOSES AND IN ORDER TO AVOID INTERFERENCE, THE ALLIED KOMMANDATURA CONSIDERS IT NECESSARY TO DEFINE WITHIN THE FRAMEWORK OF THE "DECLARATION ON BERLIN", RESPONSIBILITIES IN THE MATTER OF RADIO FREQUENCIES, AND HEREBY SPECIFIES THE PROCEDURE WHICH SHOULD BE APPLIED IN THE FUTURE FOR THE SETTLEMENT OF PROBLEMS RAISED BY THE UTILIZATION OF RADIO FREQUENCIES IN BERLIN. THIS PROCEDURE HAS ALREADY BEEN WORKED OUT WITH REPRESENTATIVES OF THE LANDESPSTDIREKTION.

I. PROVISION OF FREQUENCIES FOR GERMAN CIVILIAN USERS

(A) THE LANDESPSTDIREKTION BERLIN WILL NOTIFY DIRECTLY EACH OF THE THREE P.T.T. EXPERTS OF THE CONFIDENTIAL

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ALLIED KOMMANDATURA OF ANY NEW FREQUENCY WHICH IT WISHES TO USE OR ALLOCATE TO A GERMAN ORGANIZATION. THIS NOTIFICATION WILL BE MADE TEN DAYS PRIOR TO BRINGING THE FREQUENCY INTO USE, STATING THE POWER AND THE PURPOSE FOR WHICH IT WILL BE USED...

(B) DURING THIS TIME LIMIT, THE P.T.T. EXPERTS WILL ASCERTAIN THAT THE FREQUENCY IS AVAILABLE:

- FROM THE ALLIED SIGNAL OFFICERS,

- FROM THE ALLIED REPRESENTATIVES OF THE FREQUENCIES COMMITTEE IN BONN, IF THE RADIUS OF THE TRANSMISSIONS IS LIKELY TO CAUSE INTERFERENCE OUTSIDE BERLIN.

(C) SHOULD OBJECTIONS BE RAISED BY ONE OF THE THREE ALLIED ELEMENTS IN BERLIN, THAT ELEMENT WILL BE RESPONSIBLE FOR DEALING DIRECTLY WITH THE LANDESPSTDIREKTION BERLIN TO MAKE THE NECESSARY ADJUSTMENTS.

(D) THE LANDESPSTDIREKTION HAS COMPETENCE FOR THE ALLOCATION AMONG GERMAN USERS OF THOSE FREQUENCIES INCLUDED IN THE WAVE BANDS WHICH HAVE BEEN PERMANENTLY RESERVED FOR SPECIAL PURPOSES (MEDICAL APPARATUS, AMATEURS, ETC.). HOWEVER, SHOULD A NEW FREQUENCY BAND COME INTO USE, THE PROCEDURE DESCRIBED ABOVE IS TO BE APPLIED.

II. PROVISION OF FREQUENCIES FOR THE ALLIED FORCES

(A) THE P.T.T. EXPERT OF THE ELEMENT INVOLVED WILL INFORM THE LANDESPSTDIREKTION BERLIN OF THE FRE-

QUENCY WHICH IT INTENDS TO ADOPT TEN DAYS BEFORE IT
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COMES INTO USE.

(B) IF THE DEUTSCHE POST HAS ANY OBJECTIONS,
IT WILL WRITE TO ALL THREE P.T.T. EXPERTS STATING THE
REASON FOR THE OBJECTION. THE P.T.T. EXPERTS WILL FOR-
WARD A COPY OF THE DEUTSCHE POST'S REPLY TO THE SIGNAL
OFFICERS OF THEIR ELEMENTS WHO WILL TAKE UP THIS QUES-
TION WITH THEIR RESPECTIVE HEADQUARTERS.

III. THE P.T.T. EXPERTS WILL CALL A JOINT MEETING
OF ALL INTERESTED PARTIES SHOULD A NEW PLAN FOR THE
ALLOCATION OF FREQUENCIES REQUIRE STUDY OR, IF ANY
OTHER GENERAL QUESTION HAS TO BE DECIDED.

END TEXT

6. AN EXAMPLE OF THIS DIVISION OF RESPONSIBILITIES
OCCURRED WITH RESPECT TO THE ESTABLISHMENT OF TV/RADIO
STATION, SENDER FREIES BERLIN (SFB). THE ESTABLISHMENT
TOOK PLACE IN 1953-54 BEFORE THE ISSUANCE OF BK/L(57)30
AND WHILE BK/O(49)262 WAS STILL IN EFFECT. HOWEVER,
BK/L(57)30 IS A RECAPITULATION OF THE SUBSTANCE OF
BK/O(49)262, THOUGH IT DID FORMULATE CERTAIN NEW PRO-
CEDURAL REQUIREMENTS. THE SCENARIO FOLLOWED WITH RE-
SPECT TO THE ESTABLISHMENT OF SFB IS COMPARABLE TO THAT
WHICH WOULD BE FOLLOWED IN ANY FUTURE CASES. THE ROUGH
SCENARIO WAS AS FOLLOWS:

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A. 1952 - THE BERLIN SENAT HAS INTERNAL, LEGISLATIVE
DISCUSSIONS CONCERNING THE ESTABLISHMENT OF SFB AS A
RADIO/TV STATION IN BERLIN. THE SENAT INFORMS THE AK
OF DEVELOPMENTS AND DRAFT LEGISLATION.

B. JANUARY 1953 - BY LETTER THE BERLIN SENAT
FORWARDS TO THE AK A PROPOSAL FOR A LAW ON THE ESTABLISH-
MENT OF SFB.

C. MID-1953 - AK REPRESENTATIVES MEET WITH SENAT
REPRESENTATIVES TO CONSULT ON THE PROPOSAL AND TO CON-
SIDER REVISIONS.

D. NOVEMBER 1953 - THE SENAT ENACTS A LAW ON THE
ESTABLISHMENT OF SFB.

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E. 31 MAY 1954 - THE AK GRANTS IN ACCORDANCE WITH
BK/O(49)262 PERMISSION TO SFB TO INITIATE TRANSMISSIONS
BEGINNING 1 JUNE 1954 ON FREQUENCIES SPECIFIED BY THE
AK.

7. BACKGROUND ON FEDERAL (I.E. FRG) AREA OF RESPONSI-
BILITY

(A) ITU CONVENTIONS - BY BK/L(62)23 THE ALLIES
APPROVED THE EXTENSION OF THE 1959 ITU GENEVA CONVEN-
TION TO BERLIN WITHOUT RESERVATIONS. IT WAS REPLACED
BY THE 1965 MONTREUX CONVENTION, THE TERMS OF WHICH WERE
VIRTUALLY IDENTICAL. ON THAT OCCASION, HOWEVER, IT WAS
CONSIDERED THAT THE ALLIES SHOULD AFFIRM ALLIED RE-
SERVED RIGHTS AND BK/O(68)12, WHICH APPROVED THE EXTEN-
SION OF THE NEW CONVENTION TO BERLIN, STATED THAT THE
RIGHTS RESERVED BY THE ALLIES IN THE FIELD OF TELECOMMUNI-
CATIONS WERE NOT AFFECTED BY THE EXTENSION AND THAT IT
WAS SUBJECT TO THE PROVISIONS OF BK/L(57)30. THAT

CONVENTION WAS IN DUE COURSE REPLACED BY THE TORREMOLINOS CONVENTION OF 1973 AND IN BK/L(76)6 THE SAME RESERVATIONS WERE MADE.

(B) THE STOCKHOLM AGREEMENT - ARTICLE 44 OF THE 1959 CONVENTION PERMITTED ITU MEMBERS TO MAKE REGIONAL AGREEMENTS PROVIDED THEIR PROVISIONS DID NOT CONTRADICT THE CONVENTION ITSELF. SIMILAR PROVISIONS FOR REGIONAL AGREEMENTS WERE INCLUDED IN THE SUBSEQUENT CONVENTIONS, E.G. ARTICLE 32 OF THE TORREMOLINOS CONVENTION. THE REGIONAL AGREEMENT FOR THE EUROPEAN BROADCASTING AREA CONCERNING THE USE OF FREQUENCIES BY BROADCASTING STATIONS IN THE VHF AND UHF BANDS SIGNED AT STOCKHOLM ON 23 JUNE 1964 ("THE STOCKHOLM AGREEMENT") WAS MADE CONFIDENTIAL

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UNDER ARTICLE 44 AND IS PRESUMABLY REGARDED AS A REGIONAL AGREEMENT FOR THE PURPOSES OF ARTICLE 32 OF THE TORREMOLINOS CONVENTION. THE GDR IS A PARTY TO IT. WHEN SIGNING IT EAST BLOC COUNTRIES (INCLUDING THE DGR) DECLARED THAT:

I. "DAS DEMOKRATISCHE BERLIN IST DIE HAUPTSTADT DER DDR" (DEMOCRATIC BERLIN IS THE CAPITAL OF THE GDR);

II. FRG AUTHORITIES HAVE NO RIGHT TO SET UP OR OWN BROADCASTING STATIONS IN WEST BERLIN AS IT IS NOT PART OF THE FRG; AND

III. NO BROADCASTING STATION IN WEST BERLIN HAS THE RIGHT TO OPERATE IN FREQUENCY BANDS IV AND V WITH AN OUTPUT OF MORE THAN 50 KW.

FRANCE, THE FRG, THE UK AND SOME OTHER WESTERN EUROPEAN COUNTRIES REJECTED THIS DECLARATION OUTRIGHT, THE STOCKHOLM AGREEMENT WAS NEVER, ITSELF, EXTENDED TO THE WSB ALTHOUGH ALL COUNTRIES CONCERNED APPEAR TO REGARD IT AS APPLYING TO THE WSB. THE REASON FOR THIS APPEARS TO BE THAT THE AGREEMENT IS TREATED AS A TECHNICAL AGREEMENT BETWEEN TELECOMMUNICATIONS ADMINISTRATIONS IN FURTHERANCE OF A BASIC AGREEMENT (I.E. THE GENEVA, MONTREUX AND TORREMOLINOS CONVENTIONS) WHICH HAS BEEN EXTENDED TO BERLIN. (THEN AGAIN, FAILURE TO SEEK TO EXTEND FORMALLY THE STOCKHOLM AGREEMENT TO BERLIN MAY HAVE BEEN AN OVERSIGHT BY FRG AUTHORITIES.) THE PROCEDURE LAID DOWN IN ARTICLE 4 PARAS 1, 2 AND 3 OF THE STOCKHOLM AGREEMENT CALL FOR NOTIFICATION OF THE COUNTRIES WHICH COULD BE AFFECTED BY THE USE OF THE PROPOSED FREQUENCIES IN THE FM BAND. (AGREEMENTS ALSO EXIST FOR NOTIFICATION WITH RESPECT TO FREQUENCIES IN THE AM

AND LW BANDS.)

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FEDERAL RESPONSIBILITIES FOR FREQUENCY MATTERS

(C) IN BK/L(68)11 THE ALLIES SAID THAT, SUBJECT TO CERTAIN RESERVATIONS, THEY HAD NO OBJECTION IF THE DISCUSSIONS ON FREQUENCY COORDINATION BETWEEN THE FRG AND "THE AUTHORITIES OF THE SOVIET ZONE" (I.E. IN THE GDR) INCLUDED FREQUENCIES USED IN THE WSB. THE RESERVATIONS WERE THAT THE FREQUENCIES USED BY THE ALLIES IN THE WSB WERE NOT TO BE REVEALED AND THAT THE ALLIES WERE TO BE KEPT INFORMED OF THE DISCUSSIONS SO THAT THEY COULD CONSIDER ANY ASPECTS WHICH MIGHT AFFECT BERLIN. ALLIED AGREEMENT WOULD ALSO BE NECESSARY BEFORE ANY AGREEMENT COULD BE CONCLUDED AFFECTING FREQUENCIES USED IN BERLIN. THE SENAT WAS ALSO REMINDED THAT ON 19 OCTOBER 1965 THE AK HAD ONLY AGREEMENT TO CONFORM "IN SO FAR AS IS POSSIBLE" TO THE SCHEDULE OF FREQUENCIES OF THE FRG.

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(D) DISCUSSIONS BEGAN IN DECEMBER 1971 ON THE BASIS OF PARAGRAPH 6.4 OF THE PROTOCOL BETWEEN TWO GERMAN POSTAL MINISTRIES SIGNED ON 30 SEPTEMBER 1971. BECAUSE THE ALLIES CONSIDERED THAT IT WOULD BE BENEFICIAL TO BOTH SIDES IF FREQUENCIES USED IN BERLIN BY THE ALLIES WERE ALSO INCLUDED IN THE NEGOTIATIONS, BK/L(68)11 WAS AMENDED BY BK/L(72)17 TO PERMIT THE FRG TO REVEAL THAT FREQUENCIES USED BY THE ALLIES IN BERLIN ALTHOUGH THEY WOULD BE DESCRIBED AS "IN USE FOR PUBLIC SAFETY PURPOSES". THE PROVISIONS OF THE PROTOCOL WERE INCORPORATED INTO THE FRG/GDR POSTAL AGREEMENT OF 1976 WHICH HAS BEEN ESTENDED TO BERLIN WITHOUT ANY ALLIED RESERVATIONS.

(E) RECOGNITION BY THE WESTERN POWERS OF THE GDR AND ITS ADMISSION TO THE ITU SEEMS TO HAVE PROVOKED THE ALLIES INTO A SERIOUS STUDY OF THE QUESTION OF REGISTRATION WITH THE ITU OF RADIO FREQUENCIES (AND ESPECIALLY ALLIED FREQUENCIES) USED IN BERLIN SO AS TO PROTECT THEM AGAINST USE BY OTHER COUNTRIES. THE STUDY REVEALED THAT THE REGISTRATION SITUATION WAS CHAOTIC. SOME FREQUENCIES USED BY THE ALLIES HAD BEEN REGISTERED BY THE FRG. SOME HAD NOT BEEN REGISTERED AT ALL (E.G. THE BBC'S 809 KHZ MEDIUM WAVE FREQUENCY). NO CONSISTENT POLICY HAD BEEN FOLLOWED. THE DANGER WAS (AND PRESUMABLY STILL IS) THAT THE GDR MIGHT REGISTER FREQUENCIES WITH THE ITU WHICH THE ALLIES USED BUT WHICH HAD NOT BEEN REGISTERED BY THEM. ALTHOUGH WHEN THE GDR WAS ADMITTED TO THE ITU THE ALLIES MADE A DISCLAIMER TO THE EFFECT THAT THE "RIGHTS AND RESPONSIBILITIES OF THE ALLIES WILL IN NO WAY BE AFFECTED BY THE GDR MEMBERSHIP NOR WILL SUCH MEMBERSHIP AFFECT IN ANY WAY ESTABLISHED ALLIED DECISIONS AND PRACTICES WITH REGARD TO TELECOMMUNICATIONS" IT WAS CONFIDENTIAL

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FELT THAT THAT WAS NOT ENOUGH TO PROTECT THE ALLIED POSITION AND THAT ONLY REGISTRATION OF ALLIED FREQUENCIES WOULD REALLY AFFORD PROTECTION. A STUDY WAS UNDERTAKEN IN 1974 (ECON/PTT/WP/L(74)5). IT IS NOT CLEAR WHAT ACTION (IF ANY) WAS THEN TAKEN.

(F) IN DECEMBER 1974 THE GDR POSTAL MINISTRY WORTE TO THE BERLIN SENAT ASKING FOR COMMENTS ON FREQUENCIES FOR USE BY PROPOSED VHF TRANSMITTERS PURSUANT TO ARTICALE 4 OF THE STOCKHOLM AGREEMENT. THE SENAT REFERRED THE MATTER TO THE AK WHO HAD NO OBJECTION PROVIDED THAT REPLY WAS SENT BY THE FEDERAL POSTAL MINISTRY. SINCE THEN THERE HAVE BEEN SEVERAL NOTIFICATIONS BY THE GDR OF NEW FREQUENCIES. COMMUNICATION IS FROM THE GDR NORMALLY

TO THE LPD, BQT THE REPLIES ARE SENT BY THE
FEDERAL POSTAL MINISTRY TO THE GDR. THE GDR APPEARS
TO ACCEPT THIS.

(G) IN SPRING 1975 THE ALLIES AND THE FRG BECAME
WORRIED THAT IF AT THE ITU CONFERENCE THAT AUTUMN THE
FRG REPRESENTED ALLIED INTERESTS IN MATTERS OF BERLIN
BROADCASTING IT WOULD BE ATTACKED BY THE GDR AND USSR
ON THE GROUND THAT THE QUESTION AFFECTED BERLIN'S SECURITY.
AFTER CONSIDERING THE MATTER THE ALLIES DECIDED THAT THE
FRG COULD REPRESENT ALLIED INTERESTS AS THE ITU CONVEN-
TION HAD BEEN EXTENDED TO BERLIN IN ACCORDANCE WITH ES-
TABLISHED PROCEDURES, SUBJECT ONLY TO THE NORMAL RIGHTS
AND RESPONSIBILITIES OF THE ALLIES AND THAT THE REPRE-
SENTATION OF THE WSB IN THE ITU CONFERENCE WAS IN ACCORD-
ANCE WITH ANNEX IV 2(C) OF THE QUADRIPARTITE AGREEMENT
OF 1971.

8. CONCLUSIONS:

A. IF A NON-ALLIED ENTITY WISHES TO ESTABLISH
A TV/RADIO STATION IN BERLIN, IT SHOULD ADDRESS ITSELF
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TO SECSTATE WASHDC PRIORITY 7046
INFO ICA WASHDC PRIORITY
AMEMBASSY BERLIN
AMEMBASSY BONN
AMEMBASSY LONDON
AMEMBASSY MOSCOW

AMEMBASSY PARIS
USMISSION USNATO

C O N F I D E N T I A L SECTION 6 OF 7 USBERLIN 1425

DEPT FOR L, BONN FOR GALLAGHER

TO THE LANDESPSTDIREKTION BERLIN WHICH IF IT CONCURS WITH THE APPLICATION WILL NOTIFY THE PTT EXPERTS OF THE AK WHOSE APPROVAL IS NECESSARY. (NOTE: THE REFERENCE IN PARAGRAPH 2.I.A. OF BK/L(57)30 TO A "GERMAN ORGANIZATION" SHOULD NOT BE READ TO MEAN THAT THE AK INTENDED TO LIMIT TO "GERMAN" CORPORATIONS THE POSSIBILITY TO MAKE APPLICATION TO THE LPD; RATHER THE AK MEANT TO MAKE CLEAR THAT "NON-ALLIED" FREQUENCY ALLOCATION QUESTIONS WOULD BE HANDLED IN THE FIRST INSTANCE BY THE LPD. WE ASSUME THAT IN 1957 THE AK DID NOT CONTEMPLATE THAT A PRIVATE, NON-GERMAN ENTITY WOULD SEEK TO ESTABLISH A BROADCASTING STATION IN BERLIN.)

B. IF THE ESTABLISHMENT OF THE PROPOSED STATION IS APPROVED, IT MAY BE NECESSARY, DEPENDING ON ITS RANGE OF TRANSMISSION, FOR THE COMPETENT AUTHORITIES (I.E. THE CONFIDENTIAL

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FRG REPRESENTING THE INTERESTS OF BERLIN ABROAD) TO SEEK TO COORDINATE THE FREQUENCY WITH POSSIBLY AFFECTED NEARLY COUNTRIES, NOTABLY THE GDR.

9. MISSION HAS NOT REPEAT NOT ASKED SENAT (OR LPD) ITS VIEWS ON ESTABLISHMENT OF COMMERCIAL BROADCASTING STATION EITHER IN GENERAL OR IN TERMS OF PROPOSAL BARTLETT HAS PUT FORWARD. HOWEVER, IN OUR ANALYSIS:

A. THE BERLIN STATUTE ESTABLISHING SFB DOES NOT REPEAT NOT EXPRESSLY GIVE SFB A BROADCASTING MONOPLY IN BERLIN. FROM THE LEGISLATIVE HISTORY OF THE STATUTE, HOWEVER, IT EMERGES THAT SFB MONOPLY IN BROADCASTING WAS INTENTION OF SOME (IF NOT MANY OF) LEGISLATORS. (STATUTE MAY NOT BE EXPRESS ON THIS POINT BECAUSE OF PRIOR EXISTENCE IN BERLIN OF RIAS AND ALLIED BROADCAST STATIONS WHICH WERE NOT REPEAT NOT SUBJECT TO ESTABLISHMENT BY SENAT.)

B. WE UNDERSTAND (PARA 4 OF REFTTEL F) THAT FRG FEDERAL CONSTITUTIONAL COURT (FCC) (NOTE: REFTTEL F REFERRED TO FEDERAL SUPREME COURT, BUT WE UNDERSTAND DECISION WAS BY FCC) IN 1961 STRUCK A BLOW AGAINST COMMERCIAL BROADCASTING IN FRG BY RULING THAT DUE TO SCARCITY OF FREQUENCIES AVAILABLE IN GERMANY, IT WOULD NOT BE

POSSIBLE TO OFFER BROADCASTING FACILITIES TO ALL GROUPS WISHING THEM, AND THEREFORE SOLUTION WAS TO OFFER PUBLIC GROUPS A VOICE IN BROADCASTING.

C. DECISIONS ON THE FCC ARE BINDING IN THE FRG, BUT BY VIRTUE OF EXPRESS ALLIED RESERVATIONS THEY HAVE NO REPEAT NO LEGAL EFFECT IN BERLIN. THAT IS A LEGAL REALITY; HOWEVER, ONLY TECH-CONFIDENTIAL

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NICALLY SO. ANOTHER PRACTICAL LEGAL REALITY IS THAT EVEN THOUGH DECISIONS OF THE FCC ARE NOT BINDING ON BERLIN PUBLIC INSTITUTIONS, THEY ARE INVARIABLY HEEDED BY BERLIN COURTS, ADMINISTRATIONS, ETC. THIS IS THE RESULT OF THE DESIRE OF MANY GERMANS IN BERLIN AND THE FRG THAT THE LEGAL SYSTEM OF BERLIN BE IDENTICAL (WHICH IS IMPOSSIBLE) WITH THE LEGAL SYSTEM OF THE FRG. THE GERMANS REFER TO THIS AS LEGAL UNITY (RECHTSEINHEIT) BETWEEN BERLIN AND THE FRG. GIVEN THE EXISTENCE OF ALLIED SUPREMACY AND LEGISLATION IN BERLIN, THERE CAN BE NO TRUE IDENTITY OF LAW BETWEEN BERLIN AND THE FRG. NONETHELESS, THE ALLIES ARE COMMITTED TO THE HARMONIZATION OF LAWS, POLICIES AND PRACTICES BETWEEN BERLIN AND THE FRG WHENEVER ALLIED RIGHTS AND RESPONSIBILITIES ARE NOT AFFECTED.

D. IT IS OUR ESTIMATE THAT IN ADDITION TO THE FOREGOING, IT IS THE POSITION OF POLITICAL PARTIES IN BERLIN (WITH EXCEPTION OF SOME MEMBERS OF CDU) TO OPPOSE COMMERCIAL BROADCASTING ON THE GROUNDS THAT THE INFLUENCE OF THE BROADCAST MEDIA OVER THE POPULACE IS SO GREAT THAT BROADCASTING STATIONS SHOULD BE OPERATED BY ORGANIZATIONS THAT ARE IN ESSENCE PUBLIC CORPORATIONS HIGHLY RESPONSIVE TO THE PUBLIC AT LARGE. (THIS VIEW IS FULLY REFLECTED IN THE SFB STATUTE). THEY CONSIDER THAT PRIVATE ENTERPRISE COMMERCIAL BROADCASTING WOULD NOT MEET THIS OBJECTIVE.

E. ACCORDINGLY, WHETHER AS A RESULT OF THE SENAT'S GENERAL POLITICAL PHILOSOPHY ON BROADCASTING, OR BECAUSE IT MAY REGARD THAT SFB HAS BEEN ACCORDED THE RIGHTS TO BERLIN BROADCASTING, OR IN PURSUIT OF RECHTSEINHEIT, WE BELIEVE THAT SENAT (OR LPD) WOULD NOT REPEAT NOT FAVOR ESTABLISHMENT OF COMMERCIAL BROADCASTING STATION IN BERLIN.

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 CCO-00 CIAE-00 OTPE-00 EB-08
FCC-01 INR-10 NSAE-00 OC-06 COME-00 BIB-01 DODE-00
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C O N F I D E N T I A L SECTION 7 OF 7 USBERLIN 1425

DEPT FOR L, BONN FOR GALLAGHER

10. WE HAVE NOT REPEAT NOT CONSULTED WITH BRITISH AND
FRENCH AUTHORITIES IN BERLIN ON BARTLETT PROPOSALS,
SINCE TO DO SO AT THIS TIME WOULD BE PREMATURE.

1. IN REF D QUESTION IS POSED WHETHER ESTABLISHMENT
OF A COMMERCIAL STATION IN WESTERN SECTORS OF BERLIN
WOULD RESULT IN SOVIET OR GDR OBJECTIONS BASED ON THE
QUADRIpartite AGREEMENT (QA) OF 1971. WE BELIEVE GDR
WOULD BE LIKELY TO OBJECT IF A NEW WESTERN STATION
BEGAN BROADCASTING FROM THE WESTERN SECTORS INTO EAST
BERLIN OR THE GDR. IF THEY OR SOVIETS WOULD
BASE THEIR OBJECTIONS ON THE QA, AS
WE SEE IT THEY WOULD HAVE TO RELY ON THE
GENERAL PROVISIONS OF THE QA WHICH REFER TO OUR JOINT
COMMITMENT NOT TO CHANGE UNILATERALLY "THE SITUATION
WHICH HAS DEVELOPED IN THE AREA" AND TO OUR JOINT COMMIT-
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MENT "TO PROMOTE THE ELIMINATION OF TENSION AND THE
PROVENTION OF COMPLICATIONS IN THE RELEVANT AREA." WE
WOULD REGARD BOTH OF THESE AS WEAK BASES FOR ANY
SUCH OBJECTIONS, UNLESS TRANSMISSION INTRUDED DEEPLY
INTO GDR.DAVIS

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